

DECISION



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Harkell

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-199769

DATE: November 28, 1980

MATTER OF: Questar Data Corporation

DIGEST:

1. Protest against agency's technical evaluation scheme in RFP which was not filed until after closing date for receipt of initial proposals is untimely.
2. [Protest against evaluation of proposal] is untimely since not filed within 10 working days from time basis of protest was known or should have been known.
3. Protest questioning qualifications and competence of evaluators is untimely since basis, length of time taken to evaluate proposals, was known for more than 10 working days prior to filing of protest.
4. Issues which have been considered frequently in previous GAO decisions are not "significant" within meaning of that exception to timeliness rules.
5. Protester's allegation without evidence sufficient to support position (price leak) is speculative and, therefore, protester has not met burden of proof.

Questar Data Corporation (Questar) protests the award of a contract to Electronic Data Systems Corporation (EDS) under request for proposals (RFP) No. 10PN-HKS-0740, issued by the General Services Administration (GSA), for systems and programming services. Questar believes that the three issues raised in its protest are untimely filed, but urges that it be considered under the "significant issue" exception to our timeliness rules. 4 C.F.R. § 20.2(c) (1980). The date for receipt of proposals was April 25, 1980; Questar filed its protest with our Office

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on July 30, 1980, after notification of the July 25, 1980, award.

Questar first contends that the technical evaluation scheme in the RFP places too much emphasis on technical factors (49 points out of 100), which are by nature subjective and, as such, subject to error. Moreover, Questar argues that the nature of the work to be performed does not warrant an extensive evaluation scheme. Furthermore, Questar submits that this scheme discriminates against small business since it essentially converted the procurement into an essay writing contest. In addition, Questar's initial October 1, 1980, comments (received by our Office on October 2, 1980), on the September 17, 1980, agency report appear generally to be questioning the evaluation. Then, by letter dated October 17, 1980 (received here on October 21, 1980), Questar specifically questions GSA's evaluation of Questar's proposal.

The second issue of protest is a suspected leak of Questar's low price from the first of two rounds of best and finals; therefore, the second round was improper. Questar bases this suspicion on the fact that EDS was the only offeror to lower its price during the second round.

The third issue, raised by Questar in its initial comments on the agency report, questions the qualifications and competence of the evaluators because of the length of time, 3 months, taken to evaluate four proposals and make award.

Our Bid Protest Procedures (Procedures) require that protests based upon alleged improprieties apparent in an RFP must be filed prior to the closing date for receipt of initial proposals. 4 C.F.R. § 20.2(b)(1) (1980). Protests, other than those previously mentioned, must be filed within 10 working days after the basis for protest was known or should have been known, whichever is earlier. 4 C.F.R. § 20.2(b)(2) (1980).

We agree with Questar that the first issue was untimely filed. The questions raised pertaining to the evaluation scheme are based on alleged apparent improprieties in the solicitation which were required to have been, but were not, raised prior to the closing

date for receipt of initial proposals. In regard to Questar's specific objections to the evaluation first raised on October 21, 1980, GSA, by letter dated September 11, 1980, and received by Questar on September 15, 1980, gave Questar internal technical evaluation procedure documents and Questar's individual raw evaluation scores. The agency report of September 17, 1980, provided further detail. Therefore, this portion of Questar's protest, filed more than 10 days after the basis was known, is untimely.

The third issue is also untimely. Questar bases this aspect of the protest on the length of time to evaluate the four proposals, which was known to Questar at the time of award. Questar protested this issue on October 2, 1980, but should have protested within 10 working days from notification of the award on July 29, 1980, the date of the telegram of protest.

The "significant issue" exception to the timeliness rules, 4 C.F.R. § 20.2(c) (1980), is applied sparingly so that the timeliness rules do not become meaningless. Where the merits of a protest involve issues which have been considered frequently in previous decisions issued by our Office, which is the case here, such issues are not considered "significant" within the meaning of the provisions in our Procedures. Mueller & Wilson, Inc., B-193008, March 7, 1979, 79-1 CPD 156.

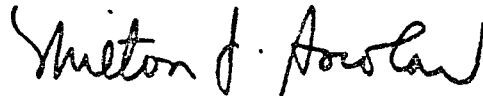
Concerning the second issue, alleged price leak, Questar filed this aspect of its protest on July 30, 1980, or 3 working days after award. There is nothing in the record to indicate that Questar should have known of a "price leak" at any time prior to the date of award. Therefore, we believe this issue to be timely filed.

Questar has alleged that EDS "is believed to have [had] information that Questar was low on price." In support of its statement, we note that Questar has simply pointed to the fact that only EDS reduced its price in the second round of best and finals. EDS, on the other hand, by letter dated August 14, 1980, denies this allegation. Moreover, GSA in the September 17, 1980, report advises that it "has no knowledge that [EDS] knew that Questar submitted the lowest price." Furthermore, GSA states that the

reduction in price by EDS "did not affect Questar's position in this procurement."

It is Questar's responsibility to present evidence sufficient to affirmatively establish its position, e.g., satisfy its burden of proof. See Dependable Janitorial Service and Supply, B-190231, January 3, 1978, 78-1 CPD 1. The fact that EDS, alone, reduced its price, in and of itself, is not enough to satisfy Questar's burden. We should note at this point that it is not uncommon for offerors to reduce prices during best and finals. Moreover, the reasons for such a reduction are potentially varied and numerous. In the absence of probative evidence, we must assume that the Questar's allegation is speculative and conclude that Questar has not met its burden of proof.

Accordingly, Questar's protest is dismissed in part and denied in part.



For the Comptroller General
of the United States